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*Pro Hac Vice Motion To Be Filed*

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DANIELLE FRANCIS, *individually  
and on behalf of all others similarly  
situated,*

Plaintiff

-against-

ABILITY RECOVERY SERVICES,  
LLC,

Defendants

Civil Case No.:

**CIVIL ACTION**

**CLASS ACTION COMPLAINT  
and  
DEMAND FOR JURY TRIAL**

1 Plaintiff, DANIELLE FRANCIS hereinafter, (“Plaintiff”), a California  
2 resident, brings this Class Action Complaint by and through her undersigned  
3 counsel, against Defendant ABILITY RECOVERY SERVICES, LLC (hereinafter  
4 “Defendant”), individually and on behalf of a class of all others similarly situated,  
5 for its violations of the Fair Debt Collection Practices Act 15 U.S.C. §1692  
6 (hereinafter “FDCPA”), and the Rosenthal Fair Debt Collection Practices Act,  
7 California Civil Code §§ 1788 et seq. (hereinafter “RFDCPA”), pursuant to Rule  
8 23 of the Federal Rules of Civil Procedure, based upon information and belief of  
9 Plaintiff’s counsel, except for allegations specifically pertaining to Plaintiff, which  
10 are based upon Plaintiff’s personal knowledge.  
11

### 12 13 14 **INTRODUCTION/PRELIMINARY STATEMENT**

- 15
- 16 1. Congress enacted the FDCPA in 1977 in response to the “abundant evidence  
17 of the use of abusive, deceptive, and unfair debt collection practices by many  
18 debt collectors.” 15 U.S.C. § 1692(a). At that time, Congress was concerned  
19 that “abusive debt collection practices contribute to the number of personal  
20 bankruptcies, to material instability, to the loss of jobs, and to invasions of  
21 individual privacy.” *Id.* Congress concluded that “existing laws . . . [we]re  
22 inadequate to protect consumers,” and that “the effective collection of debts”  
23 does not require “misrepresentation or other abusive debt collection  
24 practices.” 15 U.S.C. §§ 1692(b) & (c).  
25
  - 26 2. Congress explained that the purpose of the Act was not only to eliminate  
27 abusive debt collection practices, but also to “insure that those debt  
28 collectors who refrain from using abusive debt collection practices are not

competitively disadvantaged.” *Id.* § 1692(e). After determining that the existing consumer protection laws were inadequate, *id.* § 1692(b), Congress gave consumers a private cause of action against debt collectors who fail to comply with the Act. *Id.* § 1692k.

3. One of the purposes of the Rosenthal Fair Debt Collection Practices Act, California Civil Code § 1788 is to similarly prohibit debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts.

#### **JURISDICTION AND VENUE**

4. The Court has jurisdiction over this class action under 28 U.S.C. § 1331, 15 U.S.C. § 1692 *et seq.* and 28 U.S.C. § 2201. If applicable, the Court also has pendent jurisdiction over the state law claims in this action pursuant to 28 U.S.C. § 1367(a).
5. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

#### **NATURE OF THE ACTION**

6. Plaintiff brings this class action on behalf of a class of California consumers seeking redress for Defendant’s actions of using an unfair and unconscionable means to collect a debt.
7. Defendants actions violated § 1692 *et seq.* of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act (“FDCPA”).
8. Plaintiff is seeking damages, and declaratory and injunctive relief.

#### **PARTIES**

1  
2 9. Plaintiff is a natural person and a resident of the State of California, Contra  
3 Costa County, and is a “Consumer” as defined by 15 U.S.C. §1692(a)(3).

4 10. Defendant is a collection agency with its principal office located at 18 Pierce  
5 Street, Kingston, Pennsylvania 18704.

6 11. Upon information and belief, Defendant is a company that uses the mail,  
7 telephone, and facsimile and regularly engages in business the principal  
8 purpose of which is to attempt to collect debts alleged to be due another.

9 12. Defendant is a “debt collector,” as defined under the FDCPA under 15  
10 U.S.C. § 1692a(6).  
11

12  
13 **CLASS ALLEGATIONS**

14 13. Plaintiff bring this claim on behalf of the following case, pursuant to Fed.  
15 R. Civ. P. 23(a) and 23(b)(3) on behalf of the following class: (a) all  
16 individuals with addresses in the State of California (b) to whom the  
17 Defendant (c) sent a letter in connection with the collection of a consumer  
18 debt (d) which states “Any further delay in making payment will adversely  
19 affect your credit rating” (e) within a date of one year prior to the filing of  
20 this action and on or before a date 21 days after the filing of this action.

21 14. The identities of all class members are readily ascertainable from the records  
22 of Defendant and those companies and entities on whose behalf they attempt  
23 to collect and/or have purchased debts.

24 15. Excluded from the Plaintiff Class are the Defendant and all officers,  
25 members, partners, managers, directors, and employees of the Defendant and  
26 their respective immediate families, and legal counsel for all parties to this  
27 action and all members of their immediate families.  
28

16. There are questions of law and fact common to the Plaintiff Class, which

common issues predominate over any issues involving only individual class members. The principal issue is whether the Defendant's written communications to consumers, in the form attached as *Exhibit A*, violate 15 U.S.C. §§ 1692e.

17. The Plaintiff's claims are typical of the class members, as all are based upon the same facts and legal theories.

18. The Plaintiff will fairly and adequately protect the interests of the Plaintiff Class defined in this complaint. The Plaintiff has retained counsel with experience in handling consumer lawsuits, complex legal issues, and class actions, and neither the Plaintiff nor his attorneys have any interests, which might cause them not to vigorously pursue this action.

19. This action has been brought, and may properly be maintained, as a class action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined community interest in the litigation:

(a) **Numerosity:** The Plaintiff is informed and believes, and on that basis alleges, that the Plaintiff Class defined above is so numerous that joinder of all members would be impractical.

(b) **Common Questions Predominate:** Common questions of law and fact exist as to all members of the Plaintiff Class and those questions predominate over any questions or issues involving only individual class members. The principal issue is whether the Defendant's written communications to consumers, in the forms attached as *Exhibit A*, violate 15 U.S.C. §§ 1692e.

(c) **Typicality:** The Plaintiff's claims are typical of the claims of the class members. The Plaintiff and all members of the Plaintiff Class have claims arising out of the Defendant's common uniform course of conduct complained of herein.

1 (d) **Adequacy:** The Plaintiff will fairly and adequately protect the  
2 interests of the class members insofar as Plaintiff has no interests that  
3 are averse to the absent class members. The Plaintiff is committed to  
4 vigorously litigating this matter. Plaintiff has also retained counsel  
5 experienced in handling consumer lawsuits, complex legal issues, and  
6 class actions. Neither the Plaintiff nor his counsel have any interests  
7 which might cause them not to vigorously pursue the instant class  
8 action lawsuit.

9 (e) **Superiority:** A class action is superior to the other available means  
10 for the fair and efficient adjudication of this controversy because  
11 individual joinder of all members would be impracticable. Class  
12 action treatment will permit a large number of similarly situated  
13 persons to prosecute their common claims in a single forum efficiently  
14 and without unnecessary duplication of effort and expense that  
15 individual actions would engender.  
16

17 20. Certification of a class under Rule 23(b)(3) of the Federal Rules of Civil  
18 Procedure is also appropriate in that the questions of law and fact common  
19 to members of the Plaintiff Class predominate over any questions affecting  
20 an individual member, and a class action is superior to other available  
21 methods for the fair and efficient adjudication of the controversy.

22 21. Depending on the outcome of further investigation and discovery, Plaintiff  
23 may, at the time of class certification motion, seek to certify a class(es) only  
24 as to particular issues pursuant to Fed. R. Civ. P. 23(c)(4).  
25

## 26 **ALLEGATIONS OF FACT**

27

28 22. Plaintiff repeats, reiterates and incorporates the allegations contained in

1 paragraphs numbered above herein with the same force and effect as if the  
2 same were set forth at length herein.

3 23. Some time prior to April 30, 2019, an obligation was allegedly incurred to  
4 Ashworth College Knollwood (“Ashworth College”).

5 24. The Ashworth College obligation arose out of a transaction in which money,  
6 property, insurance or services, which are the subject of the transaction, are  
7 primarily for personal, family or household purposes.

8 25. The alleged Ashworth College obligation is a "debt" as defined by 15  
9 U.S.C. § 1692a(5).

10 26. Ashworth College is a "creditor" as defined by 15 U.S.C. § 1692a(4).

11 27. Ashworth College directly or through an intermediary contracted the  
12 Defendant to collect the alleged Ashworth College debt.

13 28. Defendant collects and attempts to collect debts incurred or alleged to have  
14 been incurred for personal, family or household purposes on behalf of  
15 creditors using the United States Postal Services, telephone and internet.

16 29. On or about April 30, 2019, Defendant mailed a Collection Letter (the  
17 “Letter”) to the Plaintiff regarding the alleged debt owed to Ashworth  
18 College. *See Exhibit A.*

19 30. Plaintiff received the letter on a date after April 30, 2019 and read it.

20 31. The Collection Letter stated, in part: “Total: \$939.00”

21 32. The Letter further stated:

22 “Any further delay in making payment will  
23 adversely affect your credit rating.”  
24

25 33. Defendant was in no position nor are they able to ascertain whether delaying  
26 payment of this alleged debt would adversely affect Plaintiff’s credit rating.

27 34. The Consumer Finance Protection Bureau (“CFPB”), a government body  
28 charged with examining and enforcing the FDCPA, issued a bulletin in

1 which they stated that it is deceptive for a debt collector to make a  
 2 representation and/or statement regarding the relationship between paying  
 3 debts and improvements on a consumer's credit report or credit file. See  
 4 attached CFPB Bulletin 2013-08 marked **Exhibit B**.

5 35. As a result of the Defendant's violations of the FDCPA, the Plaintiff was  
 6 misled and harmed.

7 36. As stated in the CFBP bulletin, "Representations like those discussed in this  
 8 bulletin are likely to be important to many consumers who view credit  
 9 reporting as an important detriment of their future access to credit and other  
 10 opportunities."

11 37. Defendant's actions as described herein are part of a pattern and practice  
 12 used to collect consumer debts.

### 13 COUNT I

### 14 **VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT** 15 **15 U.S.C. §1692e**

16 38. Plaintiff repeats, reiterates and incorporates the allegations contained in  
 17 paragraphs above herein with the same force and effect as if the same were  
 18 set forth at length herein.

19 39. Defendant's debt collection efforts attempted and/or directed towards the  
 20 Plaintiff violated various provisions of the FDCPA, including but not limited  
 21 to 15 U.S.C. § 1692e.

22 40. Pursuant to 15 U.S.C. §1692e, a debt collector may not use any false,  
 23 deceptive, or misleading representation or means in connection with the  
 24 collection of any debt.

25 41. Defendant violated said section by making a false and misleading  
 26 representation in violation of §1692e(10).

27 42. By reason thereof, Defendant is liable to Plaintiff for judgment that  
 28



1 Defendant's conduct violated Section 1692e *et seq.* of the FDCPA, actual  
2 damages, statutory damages, costs and attorneys' fees.

3 **COUNT II**

4 **(Violations Of The Rosenthal Fair Debt Collection Practices Act)**

5 43.Plaintiff repeats, reiterates and incorporates the allegations contained in  
6 paragraphs above herein with the same force and effect as if the same were  
7 set forth at length herein.

8 44.Cal. Civ. Code §1788.17 mandates that every person or entity collecting or  
9 attempting to collect a consumer debt shall comply with the provisions of  
10 Sections 1692b to 1692j, inclusive, of, and shall be subject to the remedies  
11 in Section 1692k of, Title 15 of the United States Code statutory regulations  
12 contained within the FDCPA, 15 U.S.C. § 1692 *et seq.*

13 45.As set forth above, Defendant violated 15 U.S.C. § 1692e(10) by using a  
14 deceptive and misleading means and misrepresentations to collect a debt.

15 46.As such, Defendant violated the foregoing provisions of the FDCPA and  
16 RFDCPA.

17 47.As a direct and proximate result of Defendant's violations of the RFDCPA  
18 and FDCPA, Plaintiff was harmed, and may recover from Defendant one  
19 thousand dollars (\$1,000.00) in statutory damages in addition to actual  
20 damages and reasonable attorneys' fees and costs pursuant to Cal. Civ. Code  
21 § 1788.30.  
22

23  
24 **DEMAND FOR TRIAL BY JURY**

25  
26 48. Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff  
27 hereby requests a trial by jury on all issues so triable.  
28

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff demands judgment against Defendants as follows:

- (a) Declaring that this action is properly maintainable as a Class Action and certifying Plaintiff as Class representative, and Plaintiff's Counsel as Class Counsel;
- (b) Awarding Plaintiff and the Class statutory damages;
- (c) Awarding Plaintiff and the Class actual damages;
- (d) Awarding Plaintiff costs of this Action, including reasonable attorneys' fees and expenses;
- (e) Awarding pre-judgment interest and post-judgment interest; and
- (f) Awarding Plaintiff and the Class such other and further relief as this Court may deem just and proper.

Dated: December 12, 2019

/s/ Jonathan A. Stieglitz  
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